UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,994	09/11/2003	Dorothy M. Burgess	4979.001	4657

7590 02/10/2006

Mark D. Bowen
Stearns Weaver Miller, et al.
Suite 1900
200 East Broward Boulevard
Fort Lauderdale, FL 33301

EXAMINER	
AGARWAL, MANUJ	
ART UNIT	**PAPER NUMBER**
3764	

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/659,994	BURGESS, DOROTHY M.	
	Examiner	Art Unit	
	Manuj Agarwal	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because of the following:

The abstract should exceed 150 words in length (about 15 lines) since the space provided for the abstract on the computer tape by the printer is limited.

The language should be clear and concise and should not repeat information given in the title. Thus the replacement of the term "disclosed" is suggested.

Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities:

Although it is understood that the introduction of a rheostat into the circuit depicted in fig 9 will allow the control of current to either the motor or the heater element, this setup does not constitute an RLC circuit. An RLC circuit consists of a resister, an inductor and a capacitor. The present invention provides a number of resistors, namely the motor, the heater element and the rheostat, as well as a wire inductor. However, a capacitor is not provided in this circuit. Therefor it in inaccurate to state that the "electrical components are configured to function as an RLC circuit such that the system." A user controlled oscillation between heat and vibration is still possible because of the presence of the rheostat 44.

Claim Objections

Claims 1,6 are objected to because of the following informalities: The structure provided in the disclosure does not constitute an RLC circuit (see above specification objection). Thus an RLC circuit cannot be claimed.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt (US 4,979,502) in view of Stoffregen (US 4,732,140), in further view of Schenck (US 2005/0043655).

Regarding claims 1, Hunt teaches a neck embodiment 66 (fig 9) in his disclosure of a massaging and heating device. This device is said to include a vibrator 67 and heating elements 68, both of which are controlled by a control unit 69 (col. 3, lines 57-63). Batteries or a AC power source provides electrical current to the device (col. 1, lines 15-18). Straps 70 are included with col. 2 line 65 stating that the attachment means can be VELCRO. Since the straps are being adjusted around a user's neck, it is inherent that they must be flexible. This reference lacks an electric motor with an output shaft adapted with an eccentric mass, an on-off switch, as well as a resonating RLC circuit.

Stoffregen discloses a conventional vibration device which comprises motor 60 having a shaft 62 affixed to an eccentric mass 66 (col. 4 lines 30-37). This arrangement imparts vibration to the device, and is well known, documented, and commonplace in

the art. It would have been obvious to one of ordinary skill to modify Hunt to include such an arrangement in order to provide details of a source of vibration to the device.

Schenk discloses a heating and massaging belt for use around an individual's waist. Hook and loop fastening means (paragraph 12), battery power (paragraph 10), an eccentric mass (paragraph 17), and flexible straps are provided. The device further includes a heating element as well as a plurality of vibrators that are connected in circuit. A switch to open and close the circuits, effectively turning on and off the device, is provided as well. A controller that includes a rheostat is provided as well to allow a user to independently control the amount of current flowing to the heating element or the vibrators (paragraph 21). According to the definition provided in this invention's disclosure, such an arrangement would constitute a resonating RLC circuit. It would have been obvious to one of ordinary skill at the time the invention was made to provide the cervical therapeutic massager of Hunt in view of Stoffregen with an on-off switch, as well as a rheostat in order to provide a means for user control of his/her massage or heating experience.

Regarding claims 2,7 the Hunt reference states that power may be provided to his device through batteries or an AC power source (col. 1, lines 15-18).

Regarding claims 3,8 the Hunt reference states that power may be provided to his device through batteries or an AC power source (col. 1, lines 15-18). Figs 10a and 10b show embodiments of how batteries are incorporated into the massaging/heating unit.

Regarding claim 5, Hunt's device comprises straps that terminate in VELCRO material, the trade name for hook and loop fastening means.

Regarding claim 6, see rejection of claim 1. The hook and loop fastening means would allow for an open configuration for the placement around a user's neck, as well as a closed formation for the securing of the device to the user's neck.

Claims 4,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Stoffregen in view of Schenck as applied to claims 1-3,5-8 above, and further in view of Thomas et al. (US. 6,273,866).

Hunt in view of Stoffregen in view of Schenck lacks a plurality of rubber nubs projecting from its inner surface for engaging a user's body for transmitting vibrational forces thereto. Thomas et al. discloses an apparatus for providing a massaging effect to a body part comprising a plurality of circular shaped apertures 30, or nubs, that are disposed adjacent to a vibratory means 136. These nubs would effectively be vibrated by the vibratory means 136 and provide vibration to the user's body part. The spaced nature of these nubs would allow for focused massaging at their point of contact with the skin. The nubs 30 are fashioned of a flexible material. (col. 7-8, lines 53-5) Although the reference does not explicitly state that the nubs are made of rubber it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Rubber is mostly known for its flexible nature, and thus would serve as an example of a suitable material for the device of Thomas et al. It would have been obvious to one of ordinary skill at the time the invention was made to provide the

massager of Hunt in view of Stoffregen in view of Schenck with flexible nubs as taught by Thomas et al. in order to provide pin-point massaging effects to the applied body part.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US. 6,929,612. Mangano. Battery Operated Flexible Massage Tube.

2. US. 4,878,489. Kamayachi. Massage Unit. Operable around a user's neck.

3. US. 6,537,235. Connor et al. Scarf with Electrically Operated Massager.

4. US. 4,343,303 Williams. Stimulating Apparatus. Massages user's neck.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuj Agarwal whose telephone number is (571) 272-4368. The examiner can normally be reached on Mon to Fri 9:00 AM 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Manuj Agarwal
Patent Examiner

MA

Danton D. DeMille
Primary Examiner